



Freedom of Information (Scotland) Act 2002

2002 asp 13

PART 3 **S**

THE SCOTTISH INFORMATION COMMISSIONER

45 Confidentiality of information obtained by or furnished to Commissioner **S**

- (1) A person who is or has been the Commissioner, a member of the Commissioner's staff or an agent of the Commissioner must not disclose any information which—
- has been obtained by, or furnished to, the Commissioner under or for the purposes of this Act; and
 - is not at the time of the disclosure, and has not previously been, available to the public from another source,
- unless the disclosure is made with lawful authority.
- (2) For the purposes of subsection (1), disclosure is made with lawful authority only if, and to the extent that—
- the disclosure is made with the consent of the person from whom the information was so obtained or by whom it was so furnished;
 - the information was provided for the purpose of its being made available to the public (in whatever manner) under a provision of this Act;
 - the disclosure is made for the purpose of, and is necessary for, the discharge of—
 - a function under this Act; or
 - [^{F1} an [^{F2}assimilated]] obligation;
 - the disclosure is made for the purpose of proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act or otherwise; or
 - either—
 - in a case where the person mentioned in paragraph (a) is a Scottish public authority, had that person received on the day of disclosure a request for the information that person; or

Changes to legislation: Freedom of Information (Scotland) Act 2002, Section 45 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (ii) in any other case, had the Commissioner received on that day such a request the Commissioner,
would, by virtue of section 1(1), have been under an obligation to give it.
- (3) A person who knowingly or recklessly discloses information in contravention of subsection (1) is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.

Textual Amendments

- F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F2** Word in s. 45(2)(c)(ii) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), **sch. 1 para. 3(3)**
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Modifications etc. (not altering text)

- C1** S. 45 applied (with modifications) (1.1.2005) by [The Environmental Information \(Scotland\) Regulations 2004 \(S.S.I. 2004/520\)](#), **reg 18(5)(6)** (with reg. 3)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- sch. 1 para. 74A inserted by [2023 asp 6 sch. 2 para. 2\(2\)](#)
- sch. 1 para. 95A inserted by [S.S.I. 2024/190 art. 2](#)